

Message Text

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ACTION L-03

INFO OCT-01 EUR-25 ADP-00 SCA-01 JUSE-00 RSR-01 RSC-01

/032 W

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R 181349 Z MAY 73

FM AMEMBASSY BONN

TO SECSTATE WASHDC 5125

LIMITED OFFICIAL USE SECTION 01 OF 02 BONN 07148

E. O. 11652: N/ A

TAGS: PFOR, GW

SUBJECT: US/ FRG EXTRADITION TREATY

REF: STATE 068079

1. EMBOFF HAD FURTHER DISCUSSIONS OF DRAFT TREATY WITH
WALTER (JUSTICE MINISTRY) MAY 17 WITH FOLLOWING RESULTS.

ARTICLE 4(3)(B). CHANGE IN PLACEMENT OF WORDS

" EXCEPT IN OPEN COMBAT" IN ENGLISH TEXT ACCEPTED
BY GERMANS.

ARTICLE 15(2). CHANGE ACCEPTED.

ARTICLE 21(3). WALTER SAID DEPARTMENT' S SUGGESTION
CREATED DIFFICULTIES FOR GERMAN SIDE DUE TO DIFFI-
CULTY IN FINDING A TRANSLATION WHICH WOULD BE UNDER-
STANDABLE TO GERMAN JUDGES. HE NOTED THE IMPORTANCE
OF AVOIDING A TEXT WHICH WOULD CONFLICT WITH AND
CREATE A PROBLEM FROM STANDPOINT GERMAN CRIMINAL CODE.

GERMANS CONSIDER THAT OBJECTIVE DESIRES BY BOTH SIDES
CAN BE ACHIEVED BY MINOR CHANGE IN TEXT DISCUSSED IN
WASHINGTON. NEW PROPOSAL READS AS FOLLOWS:

" WHEN THE DESCRIPTION OF THE OFFENSE CHARGED
FOR WHICH EXTRADITION WAS GRANTED IS LEGALLY
ALTERED IN THE COURSE OF THE PROCEEDINGS, AND
SHOWN BY THE SAME FACTS, THE EXTRADITED PERSON
SHALL ONLY BE PROCEEDED AGAINST OR SENTENCED
INSOFAR AS THE APPLICABLE LAW AFTER THE SAID
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ALTERATION DOES NOT PROVIDE A MORE SEVERE PUNISHMENT OR DETENTION ORDER."

ARTICLE 33(3). WALTER CLARIFIED THAT DIFFICULTY GERMANS HAVE WITH THIS PARA IS POLITICAL ONE RELATED TO ISSUE OF GERMANY AS A WHOLE. FRG CONSIDERS IT ESSENTIAL TO AVOID LANGUAGE SUGGESTING FRG HAS ACTED SO AS TO TERMINATE A TREATY WITH EFFECT IN EAST GERMANY. AFTER STUDY OF PROBLEM BEARING IN MIND DEPARTMENT'S COMMENTS, GERMANS NOW PROPOSE FOLLOWING TEXT:

" BETWEEN THE CONTRACTING PARTIES, THIS TREATY SHALL TERMINATE AND REPLACE THE EXTRADITION TREATY BETWEEN THE UNITED STATES OF AMERICA AND GERMANY SIGNED AT BERLIN JULY 13, 1930."

2. WALTER SAID THAT THE US PROPOSAL FOR EXPEDITED SURRENDER GIVES THE GERMAN SIDE SOME DIFFICULTY AND HE WAS UNCLEAR WHETHER US SEES PROPOSAL AS WITHIN CONCEPT OF EXTRADITION OR AS MODIFIED FORM OF EXPULSION. GERMANS CAN ONLY DEAL WITH THIS TYPE OF ACTION WITHIN EXTRADITION FRAMEWORK. UNDER GERMAN PROCEDURES, IF THE REQUESTED PERSON AGREES TO WAIVE FORMAL PROCEEDINGS, THE COURT DOES NOT DECIDE ON THE REQUEST WHICH IS HANDLED SOLELY BY THE JUSTICE MINISTRY AS AN ADMINISTRATIVE MATTER. WALTER SAID THAT THE QUESTION OF HOW TO DEAL WITH THIS CATEGORY OF CASES IS NORMALLY DEPENDENT ON NATIONAL LAW. FOR EXAMPLE, HE SAID THE FRG HAS NO POSSIBILITY OF HOLDING A PERSON IN CUSTODY SIMPLY ON THE BASIS OF A PROTOCOL OF AGREEMENT SIGNED BY THE PERSON WAIVING FORMAL PROCEEDING. IN AN EFFORT TO BE RESPONSIVE TO THE US SUGGESTION, WALTER OFFERED THE FOLLOWING PROPOSED TEXT, WHICH IF ACCEPTED, MIGHT BE INCLUDED AS ARTICLE 18.

" SIMPLIFIED EXTRADITION PROCEDURE.

1) THE REQUESTED STATE MAY GRANT EXTRADITION OF A PERSON FOR WHOM EXTRADITION HAS BEEN REQUESTED IN ACCORDANCE WITH ARTICLE 14 OR WHOSE PROVISIONAL ARREST HAS BEEN REQUESTED IN ACCORDANCE WITH ARTICLE 16 WITHOUT CARRYING OUT A FORMAL EXTRADITION PROCEDURE IF THE EXTRADITION IS NOT OBVIOUSLY INADMISSIBLE AND THE PERSON SOUGHT CONSENTS IRREVOCABLY TO LIMITED OFFICIAL USE

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THIS SIMPLIFIED EXTRADITION PROCEDURE.

2) CONSENT OF THE PERSON SOUGHT UNDER PARA 1) IS ONLY EFFECTIVE

(A) IF HE HAS BEEN PERSONALLY ADVISED BY THE COMPETENT JUDGE OR MAGISTRATE OF THE REQUESTED STATE THAT HE, WITH HIS CONSENT, WILL LOSE THE PROTECTION REFERRED TO IN ARTICLE 21

AND THAT HE CANNOT REVOKE HIS CONSENT ONCE
GIVEN; AND
(B) IF THE COMPETENT JUDGE OR MAGISTRATE HAS

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DRAWN UP THE WAIVER IN A PROTOCOL WHICH IS
SIGNED BY THE PERSON SOUGHT AND BY THE JUDGE
OR MAGISTRATE."
WALTER NOTED THAT IF THE ABOVE PROVISION IS INCLUDED IN
THE TREATY, APPROPRIATE CHANGES WOULD BE NECESSARY AS
FOLLOWS:
ARTICLE 21(1)
" INsofar AS EXTRADITION WAS NOT GRANTED BY
THE SIMPLIFIED PROCEDURE IN ACCORDANCE WITH
ARTICLE (18), A PERSON WHO HAS BEEN EXTRADITED
UNDER THIS TREATY SHALL NOT BE PROCEEDED
AGAINST...(ETC).

NEW PARA 26(2)

" IF THE PERSON SOUGHT HAS AGREED TO THE
SIMPLIFIED EXTRADITION PROCEDURE IN ACCORDANCE
WITH ARTICLE (18), THE REQUESTED STATE, IF ITS
LAW DOES NOT PRECLUDE, SHALL HAVE THE POWER
ON THE BASIS OF THE PROTOCOL WAIVING FORMAL
EXTRADITION PROCEEDINGS TO KEEP THE PERSON
SOUGHT IN CUSTODY UNTIL HIS SURRENDER TO THE
REQUESTING STATE IN ACCORDANCE WITH ARTICLE 20."

WALTER NOTED THAT THE FRG WOULDNOT BE ABLE TO USE THE

PROTOCOL TO DETAIN THE PERSON WHICH REQUIRES A COURT
ISSUED WARRANT. NEVERTHELESS, HE INDICATED THAT FRG
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WOULD BE WILLING TO INCLUDE A PROVISION ALONG THE ABOVE
LINES IF IT WILL BE HELPFUL TO USG BUT THAT IF THE USG
DOES NOT SEE PROPOSAL WITHIN CONCEPT OF EXTRADITION
IT MAY BE PREFERABLE TO DROP THE IDEA AS THE COMPLI-
CATIONS ON THE GERMAN SIDE WOULD DELAY CONCLUSION OF
THE TREATY.
HILLENBRAND

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